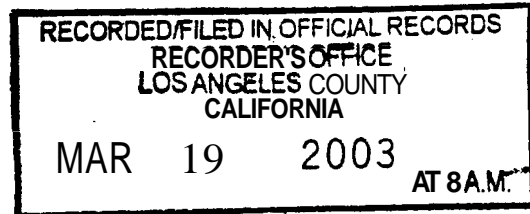


This page is part of your document- DO NOT DISCARD

03 0769234



TITLE(S) :



FEE

FEE \$	44	HH
DAF \$	2	
DAF \$		

D.T.T

CODE  
20

CODE  
19

CODE  
9

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of Parcels Shown

THIS FORM NOT TO BE DUPLICATED'

NATC

03 0769234

RECORDING REQUESTED BY:  
**Earl R. Sutton and Amy Sutton**  
**American Heavy Moving, Inc**  
**11532 East End Avenue**  
Chino, California 91710

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
Region 3  
**1011 North Grandview Avenue**  
Glendale, California 91201  
Attention: Sayareh Amirebrahimi, Chief  
**Southern California Cleanup Operations**

SPACE ABOVE THIS LINE RESERVED FOR RECORDERS USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

**SEE EXHIBIT "A"**  
**ATTACHED**

For Property at:  
**1420 South Signal Drive**  
Pomona, California

Los Angeles County Assessor's Parcel No.: 8327-022-019

This Covenant and Agreement ("Covenant") is made by and between Earl R. Sutton and Amy Sutton (the "Covenantor"), the current owner of property situated in Pomona, County of Los Angeles, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the

6005178-62

"Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant and that this Covenant shall run with the land.

ARTICLE I  
STATEMENT OF FACTS

1.01. The Property, totaling approximately one acre is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located at 1420 South Signal Drive in the City of Pomona, County of Los Angeles, State of California. This property is more specifically described as Los Angeles County Assessor's Parcel No. 8327-022-019. The Property is paved with concrete. A one-story office building is located approximately in the center of this Property. The Property is located within industrial and residential mixed-use area. The Property is located in the middle of the east block along South Signal Drive, between Grand Avenue and Phillips Boulevard.

1.02. Previous investigations conducted at the Property and in the surrounding area found high levels of lead in the surface soil between 0 and 1-foot depth, primarily in the Property and adjacent properties. In 1981 the Regional Water Quality Control Board (RWQCB) conducted an investigation in response to a complaint. As a result of RWQCB investigation, the AZ Decasing treated and removed contaminated soil from the Property. Also, in 1981 City of Pomona Fire Department inspected the AZ Decasing operation and ordered them to do some cleanup. The Los Angeles County Health Department (LACHD) began investigations of the Property in 1982. Surface soil sampling at the Property and surrounding area was conducted by LACHD, in

✓

1982, 1983 ,1985 and 1987. Several cleanups were conducted as a result of regulatory agency investigations. Previous cleanups removed highly contaminated **soils**, however, there are no available records to indicated the nature and extent of the cleanup. In April 1995 a Preliminary Endangerment Assessment Report (PEA) prepared by Tetra Tech, Inc under the supervision of the Department. During the PEA elevated levels of lead up to 1,420 mg/kg were detected in certain soil samples collected at 0.5 and 1-foot depths in the south east area of the Property. The lead contamination at the Property appears to be limited to surface soils immediately below the concrete pavement at a maximum of a 1-foot depths. Based on the Human Health Screening Evaluation, the PEA concluded that the use of the Property as unrestricted residential use would entail an unacceptable health risk. The Property was subsequently remediated by the Covenantor under the supervision and authority of the Department. The Property **was** remediated in accordance with a Removal Action Workplan (RAW) pursuant to Health and Safety Code Section 25355.5 (a)(1)(c). The RAW provides that a deed restriction and an Operation and Maintenance be required as part of the Property remediation. The Department circulated the RAW, together with a draft Negative Declaration pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et. Seq. for public review and comment. The RAW and the Negative Declaration, were approved by the Department on October 19,1999. The Department further concluded that the Property , subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if use is limited to commercial or industrial use.

ARTICLE II  
DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III  
GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5 (a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or "any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property," as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases and subleases From and after the date of recordation of this Covenant, the Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases and subleases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV  
RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for: any of the following purposes. --

- (a) A residence, including any mobile home or factory built housing. constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Manaaement

- (a) **No** activities that will disturb the the pavement or the building (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without an appropriate Soil Management Plan and a Health and Safety Plan approved by the Department prior to commencement of those activities.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property soil.

03 0769234

4.03. Prohibited Activities The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops);

4.04. Non-Interference with Cap Covenantor agrees.:

- (a) Activities that may disturb the Cap (existing pavement) (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Capped Property without prior review and approval by the Department.
- (b) **All** uses and development of the Capped Property shall preserve the integrity of the Cap
- (c) The Cap shall not be altered without written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all ~~other~~ Owners and Occupants

4.05. Access for Department-. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent

03 0769234



with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance [Agreement] shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

#### ARTICLE V

##### ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

#### ARTICLE VI

##### VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other aggrieved

10  
person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, **by** law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII  
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. **All** references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of **Los Angeles** within ten **(10)** days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being 'served or to an officer of a corporate party being served, or (2) three

(3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

. To Owner:

Earl R. Sutton and Amy Sutton  
American Heavy Moving, Inc  
11532 East End Avenue  
Chino, California 91710

To Department:

Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, California 91201  
Attn: Sayareh Anirebrahimi

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Earl R. Sutton Amy Sutton

By: ..

Title: .....

Date: 1-30-03

Department of Toxic Substances Control

By: Sayareh Amirebrahimi

Title:

Sayareh Amirebrahimi, Chief

Southern California Cleanup Operations Branch-

Glendale Office

Date:

02/04/03

STATE OF CALIFORNIA )

COUNTY OF San Bernardino )

On this 30 day of January, in the year 2003,

before me Beverly J. Kulling, Notary Public, personally appeared

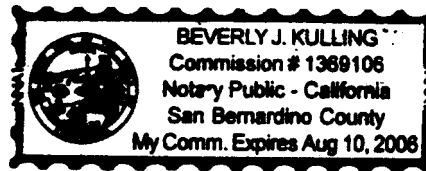
Earl R Sutton and Amy Sutton,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Beverly J. Kulling



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Los Angeles

ss.

On

2/4/03

Date

before me,

Kym R. Keyes

(Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared

Sayarrah Amizbrahimi

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kym R. Keyes

Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document:

Covenant to Restrict Use of Property

Document Date:

2-4-03

Number of Pages:

140

Signer(s) Other Than Named Above:

### Capacity(ies) Claimed by Signer

Signer's Name:

Sayarrah Amizbrahimi

☒ Individual

☐ Corporate Officer — Title(s):

☐ Partner ☐ Limited ☐ General

☐ Attorney-in-Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer is Representing:

Herself

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

03 0769234

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

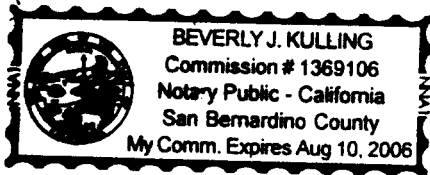
State of California

County of San Bernardino

On January 30, 2003 before me, Beverly J Kulling, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Earl R. Sutton and Amy Sutton  
Name(s) of Signer(s)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Beverly J Kulling  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Covenant to Restrict Use of Property

Document Date: 1-30-03 Number of Pages: 13

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Earl R Sutton

- ☒ Individual  
☐ Corporate Officer  
 Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer Is Representing:

Himself

Signer's Name: Amy Sutton

- ☒ Individual  
☐ Corporate Officer  
 Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer Is Representing:

Herself

EXHIBIT "A"

LOT 16 AND THE NORTH HALF OF LOT 15, TRACT NO. 7049, IN THE CITY OF POMONA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 75 PAGES 99 AND 100 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE SOUTH 40 FEET OF THE WEST 120 FEET OF THE NORTH HALF OF LOT 15, TRACT NO. 7049, IN THE CITY OF POMONA, COUNTY OF LOS ANGELES STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 75, PAGES 99 AND 100 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Assessor Parcel Nos. 8327-022-019